

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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THE PHOENIX INSURANCE COMPANY
and THE TRAVELERS INDEMNITY
COMPANY OF CONNECTICUT,

Plaintiffs,

**ORDER ADOPTING REPORT
AND RECOMMENDATION**

- against -

2:20-cv-2765 (DRH) (AYS)

MINELLI CONSTRUCTION CO. INC.,

Defendant.

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HURLEY, Senior District Judge:

Presently before the Court is the Report and Recommendation of Magistrate Judge Anne Y. Shields, dated June 28, 2021 (the “R&R” [DE 13]), recommending that the Court grant Phoenix Insurance Company (“Phoenix”) and Travelers Indemnity Company of Connecticut’s (“Travelers,” and together with Phoenix, “Plaintiffs”) motion for default judgment and award Plaintiffs \$390,579.15 in damages. Judge Shields found that Plaintiffs (1) properly established the elements of their breach of contract claim and (2) demonstrated (a) actual damages in the amount of \$352,807.00 for Phoenix and \$17,408.01 for Travelers, (b) entitlement to pre-judgment interest through October 14, 2020 (the date on which Plaintiffs filed their motion) in the amount of \$19,442.64, with additional interest to be calculated through the date of the judgment at a rate of \$91.28 per day, and (c) costs totaling \$921.50.

More than fourteen (14) days have passed since service of the R&R and no objections have been filed. Pursuant to 28 U.S.C. § 636(b) and Federal Rule Civil

Procedure 72, this Court has reviewed the R&R for clear error. Having found none, the Court concurs in the R&R's reasoning and result. The Court adds the following:

First, the R&R's recommended pre-judgment interest award is divided between the parties in proportion with each party's actual damages award.¹ Second, costs are split evenly between the Plaintiffs. Third, post-judgment interest at the federal rate is "mandatory" under 28 U.S.C. § 1961(a) and accrues from the date of the entry of judgment until Defendant has satisfied the judgment. *Tru-Art Sign Co. v. Local 137 Sheet Metal Workers Int'l Ass'n*, 852 F.3d 217, 223 (2d Cir. 2017). Accordingly, for the reasons stated in Judge Shields's R&R,

IT IS HEREBY ORDERED that Plaintiffs' motion for default judgment is granted.

Phoenix is awarded (1) actual damages in the amount of \$352,807.00, (2) pre-judgment interest through October 14, 2020 in the amount of \$18,528.84, with additional interest to be calculated through the date of the judgment at a rate of \$86.99 per day, (3) costs in the amount of \$460.75 – for a total of \$371,796.59, plus per diem interest as specified – and (4) post-judgment interest at the federal rate.

Travelers is awarded (1) actual damages in the amount of \$17,408.01, (2) pre-judgment interest through October 14, 2020 in the amount of \$913.80, with additional interest to be calculated through the date of the judgment at a rate of \$4.29

¹ Phoenix's share (\$352,807.00/\$370,215.01) of the collective actual damages is 95.30%; Travelers's share (\$17,408.01/\$370,215.01) is 4.70%.

per day, (3) costs in the amount of \$460.75 – for a total of \$18,782.56, plus per diem interest as specified – and (4) post-judgment interest at the federal rate.

The Clerk of Court is respectfully directed to enter judgment accordingly and to terminate the action.

SO ORDERED.

Dated: Central Islip, New York
July 30, 2021

s/ Denis R. Hurley
Denis R. Hurley
United States District Judge